

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

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AUTHORITY: Sec. 701, Pub. L. 89-136; 79 Stat. 570 (42 U.S.C. 3211); Title II, Chapter 3 of the Trade Act of 1974, as amended, (42 U.S.C. 2341-2355); Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended).

SOURCE: 60 FR 49700, Sept. 26, 1995, unless otherwise noted.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of deci-

sion etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88-206 as amended, 42 U.S.C. 7401 *et seq.*;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 *et seq.*;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96-510, as amended, 42 U.S.C. 9601 *et seq.* and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Public Law 94-580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86-523, as amended, 16 U.S.C. 469a-1 *et seq.*;

(9) National Historic Preservation Act of 1966, Pub. L. 89-665, as amended, 16 U.S.C. 470 *et seq.*;

(10) Endangered Species Act of 1973, Pub. L. 93-205, as amended, 16 U.S.C. 1531 *et seq.*;

(11) Coastal Zone Management Act of 1972, Pub. L. 92-583, as amended, 16 U.S.C. 1451 *et seq.*;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, 42 U.S.C. 4002 *et seq.*;

(13) Safe Drinking Water Act of 1974, Pub. L. 92-523, as amended, 42 U.S.C. 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90-542, as amended, 16 U.S.C. 1271 *et seq.*;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97-98, as amended, 7 U.S.C. 4201 *et seq.*; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

[60 FR 49678, Sept. 26, 1995, as amended at 61 FR 7984, Mar. 1, 1996]

§ 316.2 Certification as to waste treatment.

Whenever the Environmental Protection Agency (EPA) has established a permitting and enforcement system for the regulation and monitoring of the design and operation of wastewater treatment plants which is delegated to the states for certification, EDA under PWEDA will accept such state certifications in lieu of certification by EPA.

§ 316.3 Excess capacity.

(a) All projects funded by EDA under PWEDA are subject to section 702 of PWEDA and EDA shall determine section 702 compliance based on the following:

- (1) A section 702 study;
- (2) A section 702 report; or
- (3) A section 702 exemption.

(b) *Definitions.* For purposes of this section only:

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Demand means the actual quantity of a product or service that users are willing to purchase for use in the market area served by the intended commercial or industrial beneficiary.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs and technologies.

Existing competitive enterprise means an established operation which either produces the same product or delivers the same service to all or a substantial part of the market area.

Market Area means the geographic area within which products and/or services compete for purchase by customers.

Primary Beneficiary means one or more firms within the same industry which may reasonably be expected to use 50 percent or more of the capacity of an EDA-financed facility(ies) in

order to expand the supply of goods or services sold in competition with other producers or suppliers of such goods or services.

(c) For certain types of EDA projects, a section 702 study of competitive impact will be used as a basis for a decision by EDA that such project would not violate section 702 of PWEDA. A section 702 study is required when either of the following situations exists:

(1) Where a primary beneficiary is present; or

(2) When EDA so determines.

(d) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 702 study:

(1) The primary beneficiary shall submit as part of the project selection process the following information with regard to each product or service affected by the project:

- (i) A detailed description;
- (ii) Current and projected amount and value of annual sales;
- (iii) Distribution channel(s) and geographic marketing area; and
- (iv) Name of other suppliers and amount presently available in the market area.

(2) If the primary beneficiary has conducted or commissioned a market study supporting the proposed project, such market study shall be made available to EDA early in the project selection process for verification and possible use by EDA as a basis for the 702 study or report.

(e) A section 702 report (a summary of supply/demand factors) will form an acceptable basis on which to make a section 702 compliance finding when the characteristics described in paragraph (c) (1) or (2) of this section are present and in addition, it is readily apparent that the resulting increase in output alleviates a shortage of goods or services in the market area.

(f) EDA will make a blanket finding of compliance with section 702 of PWEDA for those projects which have one or more of the following characteristics:

- (1) The project has no primary beneficiary;
- (2) The beneficiary's projected new or additional annual output is less than 1